

SUMMARY ABATEMENT ORDER AND NOTICE OF HEARING

ALLEN & LILLIAN WONG
PO BOX 700005
SAN JOSE, CA. 95170-0005

RE: 309 N. 5th STREET
APN: 249-46-057

AGENDA ITEM:	4d
HEARING DATE:	September 12, 2013
HEARING TIME:	6:30 p.m.
HEARING PLACE:	City Hall Council Chambers 200 E Santa Clara Street San Jose, CA 95113

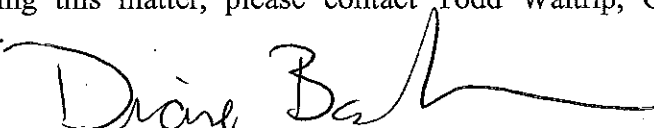
**TO THE PROPERTY OWNER AND ALL
OTHER PERSONS HAVING ANY LEGAL INTEREST IN THE ABOVE DESCRIBED
PROPERTY LOCATED IN THE CITY OF SAN JOSE:**

Please be advised that after inspections of the above described property by field investigators of the Code Enforcement Division, it has been determined that the property was found to be imminently dangerous based on the following conditions: the continued storage of a large accumulation of various items/debris including, but not limited to, household furniture, tables, chairs, bikes and other miscellaneous items located on the sidewalk, park strip and public street located in front of the Subject Property that created a dangerous obstruction for vehicular traffic. In order to abate the imminent danger, Code Enforcement Division found it necessary to remove the accumulation of household furniture, tables, chairs, bikes and other miscellaneous items, trash, refuse and garbage from the street to remove the dangerous obstructions from the public right of way.

The costs of the abatement actions, including the total cost of the actions taken and any allowable inspection fees, will be invoiced to the property owner. The invoice shall be paid within 30 days from the date that the invoice is mailed. Failure to pay the invoice amount may result in the imposition of an assessment and a lien against the property in accordance with San Jose Municipal Code Section 17.02.350.

Any person having any record, title or legal interest in the property may appear and protest the abatement action taken as identified in this Notice of Hearing at the time and place specified above. Please be advised that pursuant to San Jose Municipal Code Section 17.02.120, the City Manager may file in the Office of the County Recorder a certificate declaring the property a Public Nuisance. Failure to file a written protest prior to the hearing date or to appear at such hearing will constitute a failure to exhaust the administrative remedies.

Should you have any questions regarding this matter, please contact Todd Waltrip, Code Enforcement Inspector, at (408) 535-4892.


Diane Buchanan, Acting Code Enforcement Official
Planning, Building and Code Enforcement

Enclosure

OWNER: Allen & Lillian Wong
PO Box 700005
San Jose, CA 95170

AGENDA ITEM: 4d
HEARING DATE: September 12, 2013
HEARING TIME: 6:30 p.m.
HEARING PLACE: City Hall, Council Chambers
200 E. Santa Clara Street
San Jose, CA 95113

ADDRESS: 309 N. 5th Street
APN: 249-46-057

INSPECTION REPORT

Status of Property

The multifamily dwelling building located at 309 N. 5th Street, San Jose, Ca. 95112 ("Subject Property"), is currently occupied. As part of this Summary Abatement, the City of San Jose authorized Tucker Construction to remove the large accumulation of household furniture consisting of tables, mattress, box spring, bed frames, chairs, bikes and other miscellaneous items that had been located on the sidewalk, park strip and the street that created a dangerous obstruction for vehicular traffic.

San Jose Municipal Code Violations

9.10.400 Responsibility for compliance

The primary responsibility for proper handling of solid waste generated or accumulated on any premises shall be on the generator of the solid waste. Should the generator refuse, neglect or fail to provide for the proper handling of solid waste in accordance with this chapter, the owner of the premises within or upon which the solid waste has been generated or accumulated shall provide for proper handling of the solid waste in accordance with the provisions of this chapter.

The dangerous accumulation of solid waste dumped in the street from the Subject Property and located in the street for three (3) days created a dangerous obstruction for vehicular traffic.

9.10.410 General requirements.

A. Except as authorized by the provisions of this chapter:

4. No person shall place any solid waste on or in any public place or public property including without limitation any street, way, sidewalk, gutter, stream or creek or the banks thereof.

The dangerous accumulation of solid waste dumped in the street from the Subject Property and located in the street for three (3) days created a dangerous obstruction for vehicular traffic.

Chronology

7/19/2013 Code Enforcement received an email with an attached photograph showing an accumulation of household furniture, bikes and other miscellaneous items located in the street in front of the Subject Property. See a true and correct photograph attached hereto as **Exhibit A**.

At 4:35 p.m., Code Enforcement Supervisor Rachel Roberts telephoned the property owner Allen Wong but was unable to leave a voice mail message as the mailbox was full.

At 4:40 p.m., Code Enforcement Supervisor Rachel Roberts telephoned San Jose Police Officer Kevin Metcalf to request the current status of the Subject Property. Officer Metcalf stated that on July 18th, he made contact with an evicted tenant who was attempting to sell his items that were placed in the street in front of the Subject Property.

At 5:30 p.m., Code Enforcement Inspector Waltrip prepared a Warning Notice addressed to the Property Owners Allen & Lillian Wong to immediately remove all household furniture and all other miscellaneous items located on the sidewalk, park strip and public street in front of the Subject Property. A copy of the Warning Notice is attached hereto and incorporated herein by this reference as **Exhibit B**.

At 5:48 p.m., Code Enforcement Division Manager Jamie Matthews sent Gilbert Wong a text message with a picture of the household furniture and other miscellaneous items located on the side walk, park strip and public street. The text message notified Mr. Gilbert Wong that the Property Managers' voicemail box was full and that the City of San Jose would issue a citation and abate all items from the sidewalk, park strip and street by Saturday July 20th.

At 6:55 p.m., Code Enforcement Inspector Todd Waltrip arrived on site and observed household furniture, tables, chairs, bikes and other miscellaneous items located on the sidewalk, park strip and street in front of the Subject Property. Inspector Waltrip met with Daniel Martinez who stated his personal property currently located on the sidewalk, park strip and street were illegally removed by employees of the Property Owner's management team. Mr. Martinez informed Inspector Waltrip that he has been trying to remove and sell his items since they were placed outside. Inspector Waltrip referred Mr. Martinez to Legal Aid for legal advice but explained all items must be immediately removed from the side walk, park strip and street. Inspector Waltrip provided Mr. Martinez with a copy of the Warning Notice dated July 19, 2013 and explained if all items were not removed; the City of San Jose will begin abatement by tomorrow at 3:00p.m to remove all remaining items located on the sidewalk, park strip and street.

7/19/13 Inspector Waltrip posted the Warning Notice on the front door of the Subject Property and on a palm tree located in the park strip area of the Subject Property. See true and correct photographs attached hereto as **Exhibit C**.

7/20/13 At 9:20a.m., Inspector Waltrip arrived on site and verified the household items and other miscellaneous items observed on July 19th were still located on the sidewalk, park strip and street in front of the Subject Property.

At 12:07 p.m. Inspector Waltrip telephoned Mr. Gilbert Wong and left a detailed voicemail message that the evicted tenant Mr. Martinez's personal property is still located on the sidewalk, park strip and street in front of the Subject Property. Inspector Waltrip explained if all items were not removed from the sidewalk, park strip and street by 3:00 p.m. today, the City of San Jose will issue an Administrative Citation and would abate all items. Inspector Waltrip notified Mr. Gilbert Wong the Administrative Citation and all costs associated with the abatement would be charged to the property owners Allen & Lillian Wong. Inspector Waltrip advised Mr. Gilbert Wong that he could be reached at (408) 535-4892.

At 2:55 p.m. Inspector Waltrip arrived on site and verified the household furniture, tables, mattress, box spring, TV, chairs, bikes and other miscellaneous items were still located on the sidewalk, park strip and street in front of the Subject Property. Inspector Waltrip observed Mr. Daniel Martinez sitting in a chair located in the street selling items to people who stopped to rummage through his items on the street which were blocking the southbound lane of N. 5th Street. Inspector Waltrip informed Mr. Martinez that a truck was in route and once the contractor arrived on site, all of his items that are on the sidewalk, park strip and street would be removed.

At 3:30 p.m., City contractor Tucker Construction arrived on site and began removing miscellaneous items from the street in front of the Subject Property. At this time, Mr. Martinez and three of his friends began relocating from the street some larger items i.e. mattress, box spring, large cabinet, table, television, bike parts, household chairs and other miscellaneous items into the front yard of the Subject Property. Tucker Construction and Inspector Waltrip removed all remaining items from the sidewalk park strip and street left behind by Mr. Martinez. See true and correct photographs attached hereto as **Exhibit D**.

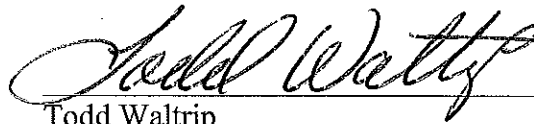
08/26/2013 Code Enforcement Inspector Todd Waltrip researched the Santa Clara County Assessor records and the Santa Clara County Records and confirmed the property is owned by Allen & Lillian Wong ("Property Owner") and the mailing address on record is PO Box 70005, St. San Jose, CA 95170-0005.

CODE ENFORCEMENT STAFF RECOMMENDATIONS

Staff recommends that the San Jose Appeals Hearing Board uphold the abatement actions taken by the City of San Jose to clean and remove all hazards from the sidewalk, park strip and street in front of the Subject Property.

ATTESTING STATEMENT OF CODE ENFORCEMENT INSPECTOR

1. I am the Code Enforcement Inspector for the City of San Jose assigned to investigate the potential Municipal Code Violations at 309 N. 5th Street that is the subject of this Inspection Report.
2. I have prepared and reviewed this Inspection Report and can attest to the truth of the matters stated above.

A handwritten signature in cursive script, reading "Todd Waltrip", written over a horizontal line.

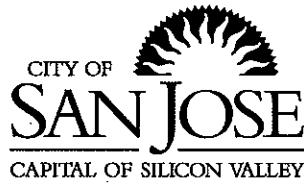
Todd Waltrip
Code Enforcement Inspector

Exhibit A



**309 N. 5th ST.-HOUSEHOLD FURNITURE AND OTHER MISCELLANEOUS ITEMS
PLACED ON THE SIDEWALK, PARK STRIP AND STREET.**

Exhibit B



Department of Planning, Building and Code Enforcement

JOSEPH HORWEDEL, DIRECTOR

JULY 19, 2013

ALLEN & LILLIAN WONG
P.O. BOX 700005
SAN JOSE, CA. 95170

WARNING NOTICE

SUBJECT: Municipal Code Violation – Pending Administrative Citation

LOCATION: 309 N. 5TH ST. APN 249-46-057

CASE NUMBER: 201308038

The Code Enforcement Division of the City of San Jose has received and **confirmed** a report of the following violation(s) of the San Jose Municipal Code at the above referenced location:

Violation: A large accumulation of various items/debris including, but not limited to, household furniture, tables, chairs, bikes and other miscellaneous items located on the sidewalk, park strip and public street in front of the Subject Property.

SJMC 1.08.010 Enforcement of Code-Violations and remedies

- A. No person shall violate any provision or fail to comply with any of the requirements of this Code or of any other ordinance of the city. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of this Code or of any city ordinance, other than administrative provisions thereof, shall be guilty of a misdemeanor, unless the violation of such provision is designated as an infraction or is a parking violation. The Code provisions for which a violation is an infraction are set forth in Section 1.08.020. The Code provisions for which a violation is a parking violation are set forth in Section 1.08.025.
- F. Any condition existing in violation of any of the provisions of any state or federal law or regulation or of this Code or any other city ordinance shall be deemed a public nuisance and may be abated by the city. Nuisance shall include, but is not limited to, the factors in Section 1.13.050.

SJMC 9.10.410 A4 Solid Waste - General Requirements: Except as authorized by the provisions of this chapter:

No person shall place any solid waste on or in any public place or public property including without limitation **any street, way, sidewalk**, gutter, stream or creek or the banks thereof. then only in the manner, place and time and subject to such restrictions as may be imposed by the health officer or the city council.

CORRECTIONS REQUIRED: IMMEDIATELY

- (1) Remove the large accumulation of various items/debris including, but not limited to, all household furniture, tables, chairs, bikes and other miscellaneous items located on the sidewalk, park strip and public street in front of the Subject Property.
- (2) Properly dispose of the large accumulation of various items/debris including, but not limited to, household furniture, tables, chairs, bikes and other miscellaneous items located on the sidewalk, park strip and public street in front of the Subject Property or;
- (3) Remove the large accumulation of various items/debris including, but not limited to, all household furniture, tables, chairs, bikes and other miscellaneous items located on the sidewalk, park strip and public street in front of the Subject Property and properly store all items either inside the residence; an accessory building constructed in accordance with the provisions of this Code or in an area that provides for a five-foot setback from any property line and, which is not visible from any street. In addition to the setback requirement, at least one thousand five hundred square feet, or at least sixty percent of the remaining rear yard area, whichever is less, must be maintained as usable outdoor recreational space.

Failure to comply will result in an Administrative Citation issued to the property owner and City abatement action without further notice. All costs associated with an abatement will be charged to you, the property owner. The Municipal Code allows the City to perform appropriate measures necessary to perform an abatement.

If the re-inspection of the property reveals non-compliance with any of the required corrections in this warning and a subsequent re-inspection is required to determine compliance, a re-inspection fee of **\$183.40** will be assessed for each subsequent re-inspection.

Your prompt attention to this matter is appreciated. Should you have any questions or information that indicates corrective action has been taken, please contact me at (408) 535-7798.

Sincerely,

Todd Waltrip
Code Enforcement Inspector Badge #074E

Exhibit C

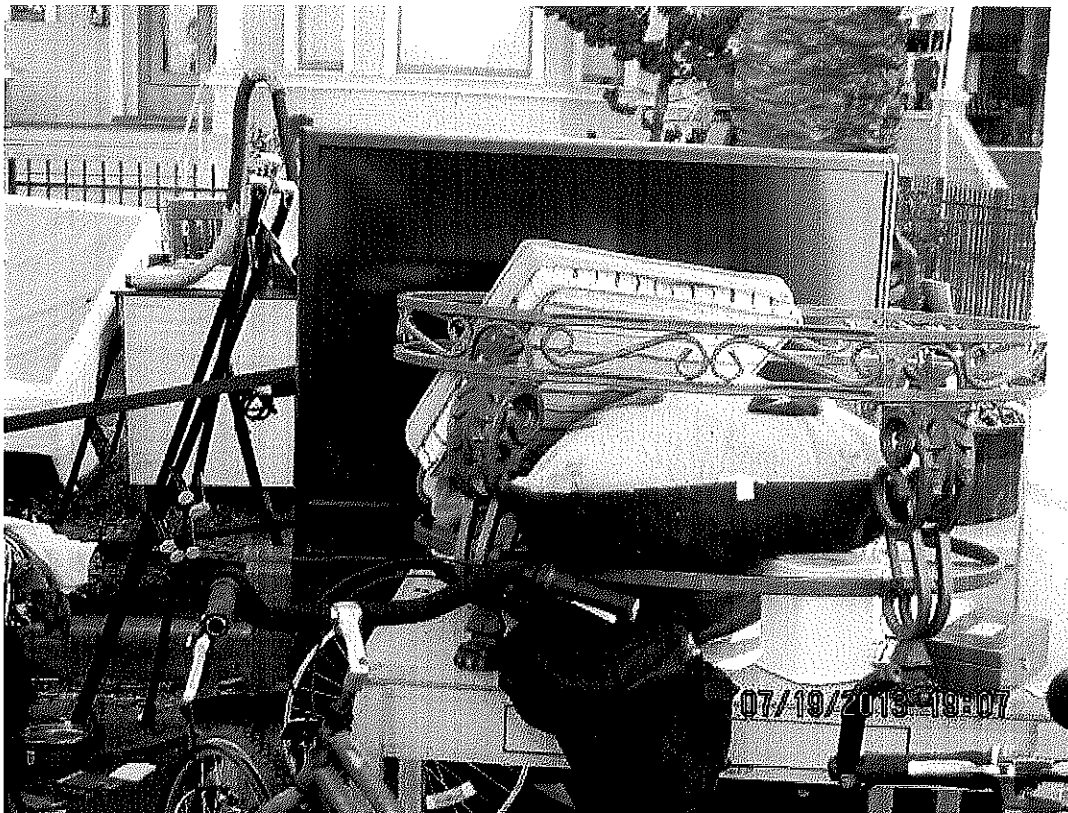


309 N. 5th ST. JULY 19, 2013-HOUSEHOLD FURNITURE AND OTHER MISCELLANEOUS ITEMS PLACED ON THE SIDEWALK, PARK STRIP AND STREET.





309 N. 5th ST. JULY 19, 2013-HOUSEHOLD FURNITURE AND OTHER MISCELLANEOUS ITEMS PLACED ON THE SIDEWALK, PARK STRIP AND STREET.





309 N. 5th ST. JULY 19, 2013-HOUSEHOLD FURNITURE AND OTHER MISCELLANEOUS ITEMS PLACED ON THE SIDEWALK, PARK STRIP AND STREET.





309 N. 5th ST. JULY 19, 2013-WARNING NOTICE POSTED ON FRONT DOOR.

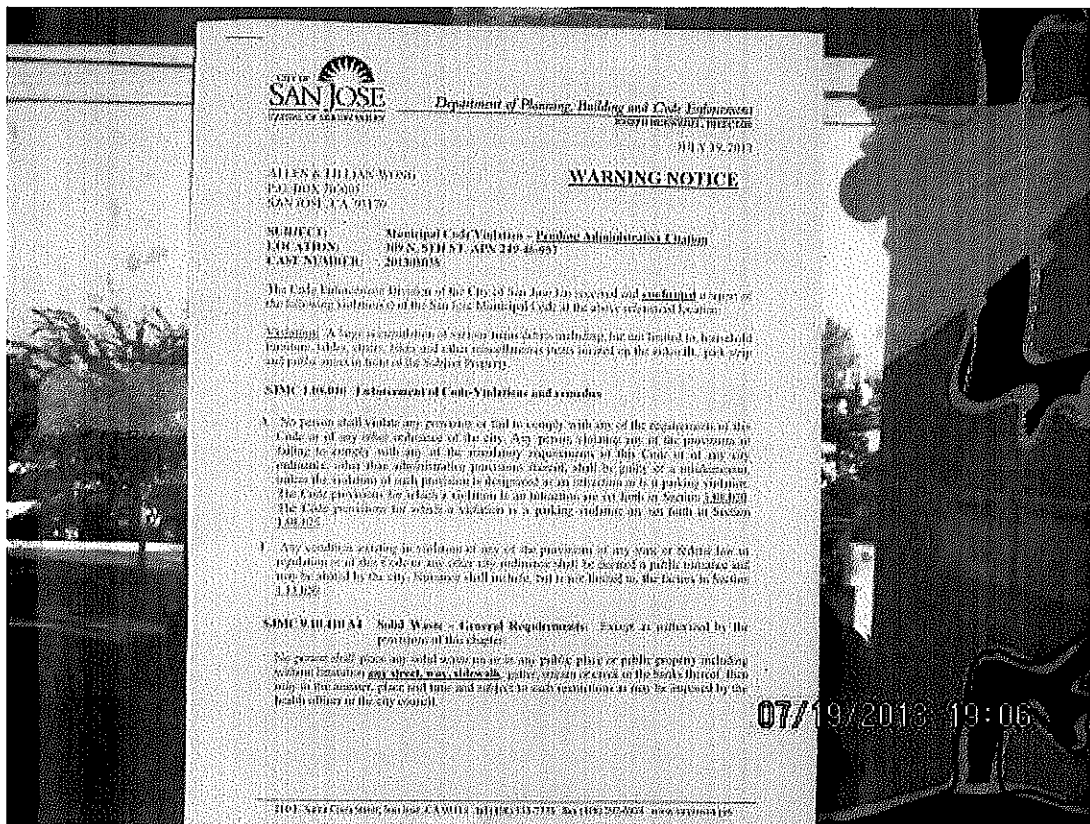


Exhibit D



309 N. 5th ST. JULY 20, 2103-HOUSEHOLD FURNITURE AND OTHER MISCELLANEOUS ITEMS PLACED ON THE SIDEWALK, PARK STRIP AND STREET.





309 N. 5th ST. JULY 20, 2103-HOUSEHOLD FURNITURE AND OTHER MISCELLANEOUS ITEMS PLACED ON THE SIDEWALK AND PARK STRIP.





309 N. 5th ST. JULY 20, 2103-DANIEL MARTÍNEZ SELLING REMAINING ITEMS FROM STREET.
ITEMS PLACED ON THE SIDEWALK AND PARK STRIP.





309 N. 5th ST. JULY 20, 2103-VEHICLE STOPPED IN STREET TO LOOK AT STREET ITEMS.





309 N. 5th ST. JULY 20, 2103-ITEMS RELOCATED INSIDE THE FRONT YARD AND ABATEMENT COMPLETED.

